IPBC Intergovernmental Personnel Benefit Cooperative

LEGISLATIVE UPDATES

AUGUST 2024

HB5395

HB5395 would prevent most step therapies for prescriptions. IPBC has since learned that self funded plans are excluded. HB 5395 has been sent to the Governor.

HB4460

HB 4460 requires specified public insurance plans governing the Illinois State Police, county sheriff's departments, municipal police officers and firefighters, and firefighters within a fire protection district to provide joint mental health therapy services as part of those insurance plans. HB 4460 does not require those joint mental health therapy services to be offered without copays or deductible because an amendment to the bill specifically removed a provision that required those services to be provided with no copay or deductible, and other provisions of relevant laws that prohibit imposing copays and deductibles for certain medical services do not apply. See additional analysis. HB4460 has been sent to the Governor.

SB3538

SB 3538 requires counties, municipalities, and fire protection districts that are self-insurers for the purpose of providing health insurance coverage for its employees to provide "mental health counseling" to their "first responders," and both of those terms are defined in the bill. SB 3538 requires the impacted insurance plans to provide mental health counseling without imposing co-pays, deductibles, or any other cost sharing requirement for the required coverage. SB 3538 requires the impacted insurance plans to provide mental health counseling without imposing co-pays, deductibles, or any other cost sharing requirement for the required coverage. Effective June 1, 2025. See additional analysis.

SB3538 has been sent to the Governor. IPBC is working with its carrier partners to determine the best path forward with SB3538. Please reach out to Dave Cook, Executive Director with questions, davec@ipbchealth.org.

Class Action Lawsuits

When there are class action lawsuits that impact aspects of employee benefits, IPBC files on behalf of the membership. However, IPBC can only do so for the time period that an IPBC member group was a member of IPBC. Please reach out to Dave Cook, Executive Director with questions, davec@ipbchealth.org.

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MEMORANDUM

To: Dave Cook, Executive Director, IPBC

CC:

From: Dan Lev, Associate

Subject: Analysis of House Bill 4460 (HB 4460)

Date: June 6, 2024

Questions Presented

1) What medical services are required by HB 4460? and

2) What, if any, is the impact on copayments (copays) and deductibles concerning services that may be required under HB 4460?

Short Answer

1) HB 4460 requires specified public insurance plans governing the Illinois State Police, county sheriff's departments, municipal police officers and firefighters, and firefighters within a fire protection district to provide joint mental health therapy services as part of those insurance plans.

2) HB 4460 does not require those joint mental health therapy services to be offered without copays or deductible because an amendment to the bill specifically removed a provision that required those services to be provided with no copay or deductible, and other provisions of relevant laws that prohibit imposing copays and deductibles for certain medical services do not apply.

Analysis

1. HB 4460 requires certain public health insurance plans to provide joint mental health therapy services.

HB 4460 amends or creates the following sections:

> 1) creates a new section 5 ILCS 375/6.11D concerning the State Employees Group Insurance Act of 1971 governing insurance for the Illinois State Police;
>
> 2) amends the Counties Code 55 ILCS 5/5-1069 governing healthcare plans offered to county employees;
>
> 3) amends the Municipal Code 65 ILCS 5/10-4-2 governing healthcare plans offered to municipal employees; and
>
> 4) creates a new section 70 ILCS 705/6.3 concerning fire protection districts that provide health insurance to its officers and members of fire departments.

This memo is concerned with 2, 3, and 4 above.

The HB 4460 amendments to each of the above statutes is nearly identical. The amendments are two paragraphs. The first paragraph reads roughly as follows:

> [If a county, municipality, or fire protection district] is a self-insurer for the purposes of providing health insurance coverage to its [employees or members], the insurance coverage shall include joint mental health therapy services for [any member of the county sheriff's department, municipality's police or fire department, or fire protection district member] and any spouse or partner of the member that lives with that member.

The second paragraph provides that these joint mental health therapy services (Required Services) must be performed by a licensed physician, psychologist, social worker, clinical social worker, family or marriage therapist, or professional counselor. In the amendments to the Counties Code and Municipal Code, HB 4460 explicitly preempts home rule authority.

Thus, in plain language, HB 4460 requires any county, municipality, or fire protection district that is a self-insurer for the purpose of offering health insurance for its employees/members, the insurance coverage these public bodies provide must include the Required Services for police officers, firefighters, and their partners/spouses that live with them. Lastly, home rule authority is preempted concerning offering the Required Services.

2. <u>HB 4460 does not restrict imposing copays or deductibles for the Required Services.</u>

There are two reasons why HB 4460 should not be interpreted to prohibit copays or deductibles from being applied to the provision of the Required Services.

First, HB 4460 was originally drafted with provisions that specifically *did* require no copays and deductibles be applied to the Required Services, but they were removed. The following language was included when the bill was introduced in January 2024:

> "No deductible, coinsurance, copayment, or any other cost-sharing requirement may be imposed for coverage provided under this subsection."

This language referred to the Required Services and was removed by House Committee Amendment No. 1 to the bill in April 2024. Additionally, the creation of 70 ILCS 705/6.3 (applicable to fire protection districts) was added by Senate Amendment No. 2 to the bill in May 2024 and was drafted without the above limitation on deductibles and copays.

Therefore, there is clear legislative intent that the Required Services imposed by HB 4460 can be offered with copays and deductibles as the provisions to the contrary were explicitly removed.

Second, the totality of the statutes amended by HB 4460, both the amended and non-amended text, supports the interpretation that the Required Services can be offered with copays or deductibles.

70 ILCS 705/6.3 is a new section. Read in its entirety and in relation to the other sections of the Fire Protection District Act (70 ILCS 705/0.01 et seq.), there is no statutory basis any services offered through an insurance plan under that Act need to be offered with no copay or deductible.

55 ILCS 5/5-1069 (the amended Counties Code section) and 65 ILCS 5/10-4-2 (the amended Municipal Code section) both have provisions within them requiring certain medical services be offered with no deductible or copay. These sections are nearly identical and contain the same relevant provisions found in both of their subsection (d). Both subsections read as follows:

> "(d) If a [county/municipality], including a home rule [county/municipality], is a self-insurer for purposes of providing health

> insurance coverage for its employees, the insurance coverage shall include screening by low-dose mammography for all women 35 years of age or older for the presence of occult breast cancer unless the [county/municipality] elects to provide mammograms itself under [Section 5-1069.1/Section 10-4-2.1]. The coverage shall be as follows:
>
> [Coverage pertaining to mammograms and breast health]
>
> […]
>
> **A policy subject to this subsection** shall not impose a deductible, coinsurance, copayment, or any other cost-sharing requirement on the coverage provided; except that this sentence does not apply to coverage of diagnostic mammograms to the extent such coverage would disqualify a high-deductible health plan from eligibility for a health savings account pursuant to Section 223 of the Internal Revenue Code (26 U.S.C. 223)."
> 55 ILCS 5/5-1069; 65 ILCS 5/10-4-2 (emphasis added)

In both provisions discussed above, the language governing mammograms and breast health being offered without a deductible or copay are in subsection (d). Likewise, in the HB 4460 amendments, the provisions mandating the Required Services are both located in subsection (d-25). Subsections (d) and (d-25) are not the same, and the requirements of one do not apply to the other. Thus, an insurer that offers the Required Services subject to HB 4460 within the new subsection (d-25) of 55 ILCS 5/5-1069 and 65 ILCS 5/10-4-2 would not be required to offer the Required Services with no deductible or copay like the services under subsection (d) of those statutes.

Therefore, because the General Legislature explicitly removed language from HB 4460 mandating the Required Services be offered with no copays or deductible, and the portions of the statutes amended by HB 4460 that require certain medical services be offered with no copay or deductible do not apply to the Required Services under HB 4460, the bill does not require municipal, county, or fire district insurers to offer the Required Services with no copay or deductible.

We are available to answer any questions about this memo upon request.

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MEMORANDUM

To: David Cook, Executive Director, IPBC

CC:

From: Dan Lev, Associate

Subject: Analysis of Senate Bill 3538 (SB 3538)

Date: June 10, 2024

Questions Presented

1) What medical services are required by SB 3538? and

2) What, if any, is the impact on copayments (copays), deductibles, or other cost sharing requirements concerning medical services that insurance plans may be mandated to provide under SB 3538?

Short Answer

1) SB 3538 requires counties, municipalities, and fire protection districts that are self-insurers for the purpose of providing health insurance coverage for its employees to provide "mental health counseling" to their "first responders," and both of those terms are defined in the bill.

2) SB 3538 requires the impacted insurance plans to provide mental health counseling without imposing co-pays, deductibles, or any other cost sharing requirement for the required coverage.

Analysis

SB 3538 impacts the following sections:

1) amends the Counties Code 55 ILCS 5/5-1069 governing healthcare plans offered to county employees;

> 2) creates a new section within the Municipal Code, 65 ILCS 5/10-4-2.4, addressing new health benefits to be provided by a municipality's group insurance plan; and
>
> 3) adds additional requirements to new section 70 ILCS 705/6.3 which was created by HB 4460 governing fire protection districts.

The SB 3538 amendments to each of the above statutes are nearly identical and contain the following three provisions: 1) language requiring counties, municipalities, and fire protection districts to offer "mental health counseling" for "first responders" as part of the public body's health insurance coverage; 2) a definition of "mental health counseling" and "first responders"; and 3) language preempting home-rule authority, which is applicable to municipalities and counties but not fire protection districts. Each of these areas will be discussed below in further detail.

1. <u>SB 3538 requires public bodies to offer mental health counseling to first responders as part of their insurance coverage without imposing deductibles or copays for those services.</u>

The main requirement of SB 3538 is for counties, municipalities, and fire protection districts to offer mental health counseling to first responders through their insurance plans without imposing copays and deductibles for those services. The main language in the bill impacting each of these public bodies reads as follows:

> If a [county, municipality, or fire protection district], including a home rule [county or municipality], is a self-insurer for purposes of providing health insurance coverage for its employees, the insurance coverage shall include, on and after June 1, 2025, mental health counseling for any employee who is a first responder without imposing a deductible, coinsurance, copayment, or any other cost-sharing requirement on the coverage provided, except that this subsection does not apply to the extent such coverage would disqualify a high-deductible health plan from eligibility for a health savings account pursuant to Section 223 of the Internal Revenue Code.

This language makes clear that the required mental health counseling must be provided through the public body's insurance coverage without imposing copays, deductibles, or any other form of cost sharing requirement on the first responders. Unlike the memo analyzing HB 4460 dated June 6, 2024, where the General Assembly removed the statutory language requiring certain services be offered through insurance without a copay or a deductible, in SB 3538, the General Assembly kept such language included.

Impacted insurance plans must begin providing mental health counseling by June 1, 2025.

2. <u>The definition of "mental health counseling" and "first responder" are provided in SB 3538.</u>

"Mental health counseling" required to be provided under SB 3538 is defined as "counseling therapy sessions provided by a clinical social worker, professional counselor, or licensed psychologist."

"First responders" eligible for these services are defined as follows:

> "police and corrections officers, deputy sheriffs, firefighters, emergency medical services personnel, as that term is defined in Section 3.5 of the Emergency Medical Services (EMS) Systems Act, dispatched pursuant to a 9-1-1 call, emergency medical dispatchers, as that term is defined in Section 3.70 of the Emergency Medical Services (EMS) Systems Act, public safety telecommunicators, as that term is defined in Section 2 of the Emergency Telephone System Act."

For 70 ILCS 705/6.3 governing fire protection districts, "police and corrections officers" are not included in the definition of first responders.

Additionally, for municipalities and counties, the definition of first responder also includes "mental health professionals employed and dispatched by any unit of local government in response to emergency crisis calls received on public emergency service lines instead of or in conjunction with law enforcement."

3. <u>For counties and municipalities, the provisions of SB 3538 preempt home rule authority.</u>

The provisions of SB 3538 pertaining to the Counties Code and Municipal Code contain the required language that explicitly preempts home rule authority. SB 3538 states:

> "The requirement that mental health counseling be included in health insurance coverage as provided in this [Section/subsection] is an exclusive power and function of the State and is a denial and limitation under Article VII, Section 6, subsection (h) of the Illinois Constitution of home rule [municipal/county] powers."

Thus, the requirement for municipal and county insurance plans to provide the above-described mental health counseling cannot be denied based on home rule authority.

4. <u>Summary</u>

In summary, SB 3538 requires counties, municipalities, and fire protection districts who are self-insurers for the purpose of providing health insurance coverage for its employees to provide "mental health counseling" to "first responders" as part of their insurance coverage without imposing a deductible, co-pay, or any other cost-sharing requirement for those services. Mental health counseling and first responders are defined terms within SB 3538, and the bill also preempts county and municipal home rule authority.

We are available to discuss this memo upon request.